

Montana Water Court
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FILED
07/18/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
39FJ-0008-I-2023
Lockman, Melissa
1.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE BEAVER CREEK BASIN (39FJ)
INTERLOCUTORY DECREE

* * * * *

CLAIMANTS: Costello Living Trust; Bobbie L. Wagner;
Wagner Living Trust

CASE 39FJ-0008-I-2023
39FJ 30139316
39FJ 30144558
39FJ 30144559

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned claims appeared in the Interlocutory Decree for Little Beaver Creek (Basin 39FJ) issued on September 22, 2022. The claims are co-owned by Costello Living Trust, Wagner Living Trust, and Bobbie L. Wagner. The claims received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

The claims are consolidated into Case 39FJ-0008-I-2023 for purposes of this Master's Report.

FINDINGS OF FACT

1. Claim 39FJ 30144559 received the following issue remark:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 04/11/2022 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY COSTELLO LIVING TRUST, WAGNER LIVING TRUST, AND BOBBY L WAGNER.

2. Ownership of claim 39FJ 30144559 has been updated to reflect the owners in the issue remark.

3. All three claims received the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39FJ DECREE ISSUED 11/01/2018.

4. This remark served its notice purpose.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

2. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. The ownership issue remark does not overcome the prima facie status of claim 39FJ 30144559. Ownership has been updated to reflect the owners addressed by the issue remark.

2. The issue remark described in Finding of Fact No. 3 served its notice purpose.

RECOMMENDATIONS

1. The ownership issue remark should be removed from claim 39FJ 30144559 and the elements should remain as they appeared in the Basin 39FJ Interlocutory Decree.

2. The issue remark described in Finding of Fact No. 3 should be removed from each claim.

A post decree abstract of each water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Costello Living Trust
% Charles Costello
244 S Vista St
Visalia, CA 93292-7013

Wagner, Bobbie L
3321 S Dollner
Visalia, CA 93277

Wagner Living Trust
% Harvey & Sally Wagner Co-Trustees
244 S Vista St
Visalia, CA 93292-7013

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BEAVER CREEK
BASIN 39FJ

Water Right Number: 39FJ 30139316 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

BOBBIE L WAGNER

3321 S DOLLNER

VISALIA, CA 93277

WAGNER LIVING TRUST

%HARVEY & SALLY WAGNER CO-TRUSTEES

244 S VISTA ST

VISALIA, CA 93292 7013

COSTELLO LIVING TRUST

% CHARLES COSTELLO

244 S VISTA ST

VISALIA, CA 93292 7013

***Priority Date:** DECEMBER 31, 1965

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 8.00 GPM

Volume: 1.00 AC-FT

Households: 1

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSE	5	5N	60E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENWSE	5	5N	60E	FALLON

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139316

30144558

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BEAVER CREEK
BASIN 39FJ

Water Right Number: 39FJ 30144558 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: BOBBIE L WAGNER
3321 S DOLLNER
VISALIA, CA 93277

WAGNER LIVING TRUST
%HARVEY & SALLY WAGNER CO-TRUSTEES
244 S VISTA ST
VISALIA, CA 93292 7013

COSTELLO LIVING TRUST
% CHARLES COSTELLO
244 S VISTA ST
VISALIA, CA 93292 7013

***Priority Date:** DECEMBER 31, 1965
Type of Historical Right: USE
Purpose (use): STOCK
Flow Rate: 8.00 GPM
***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER
Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
1		NENWSE	5	5N	60E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
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Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139316

30144558

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BEAVER CREEK
BASIN 39FJ

Water Right Number: 39FJ 30144559 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

BOBBIE L WAGNER

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VISALIA, CA 93277

WAGNER LIVING TRUST

%HARVEY & SALLY WAGNER CO-TRUSTEES

244 S VISTA ST

VISALIA, CA 93292 7013

COSTELLO LIVING TRUST

% CHARLES COSTELLO

244 S VISTA ST

VISALIA, CA 93292 7013

***Priority Date:** DECEMBER 31, 1898

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 8.00 GPM

Volume: 1.00 AC-FT

Households: 1

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSE	5	5N	60E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENWSE	5	5N	60E	FALLON